

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10002 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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BK MAKWANA

Versus

STATE OF GUJARAT

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Appearance:

MR PARESH UPADHYAY for Petitioner  
MR DA BAMBHANIA for Respondent No. 1  
MS SEJAL K MANDAVIA for Respondent No. 2  
MR ANANT S DAVE for Respondent No. 3, 4

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 22/09/97

ORAL JUDGEMENT

This petition is filed by a Deputy Executive Engineer of Gujarat Maritime Board (hereinafter referred to as the GMB) constituted under the Gujarat Maritime Board Act, 1981 for challenging the seniority assigned to respondent nos. 3 and 4 in the cadre of Deputy Executive

Engineer above the petitioner and also for challenging the promotion given to the said respondents in the cadre of Executive Engineers in supersession of the claim of the petitioner for seniority.

2. The petitioner joined as a Supervisor in the then Port Organization of State of Gujarat on February 19, 1969. Initially the petitioner was appointed on the workcharge establishment and thereafter he was brought on regular establishment with effect from February 13, 1971. The petitioner possesses Diploma in Engineering and accordingly he was appointed in the cadre of Supervisors. Respondents nos. 3 and 4 possess degree in engineering and therefore, they were appointed as junior engineers on December 7, 1974 and January 9, 1975 respectively.

3. Promotions to the cadre of Deputy Executive Engineers in the Port Organization were to be made from amongst the junior engineers, supervisors and Overseers (Certificate holders) in the ratio of 7:4:1 and as per the recruitment rules they were required to possess experience of about 3, 8 and 13 years respectively (Annex.II page 51). Now, it appears that when respondent nos. 3 and 4 as well as the petitioner, amongst others, came to be promoted to the cadre of Deputy Executive Engineers by order dated November 24, 1977, (Annex. E Page 29 ) issued by the then Public Works Department. Respondent nos. 3 and 4 had not put in the minimum qualifying service of three years in the cadre of Junior Engineers and therefore, the promotion order contained remarks against their names to the effect that the promotion of respondent nos. 3 and 4 was to be made operative from December 7, 1977 and January 9, 1978 respectively. We are not concerned with Mr.K.K.Patel , who was also promoted by the said order with effect from January 1, 1978 because the Court is informed that he has gone to States and consequently there is no live dispute regarding his seniority in the cadre of Deputy Engineers.

The petitioner has contended in the present petition that since respondent nos. 3 and 4 were promoted as Deputy Executive Engineers with effect from December 7, 1977 and January 9, 1978 respectively, whereas the petitioner was promoted to the said cadre with effect from the date on which the order was issued i.e. on November 24, 1977, the petitioner was entitled to be treated as senior to the aforesaid respondents and therefore, the authorities i.e. State of Gujarat and the GMB have erred in treating the petitioner as junior to the said respondents in the various provisional seniority lists published by the GMB which is present employer of

the petitioner.

According to the learned Counsel for the petitioner, the seniority lists issued so far by the GMB in September 1987, February 1993 and March 1996 were all provisional and therefore, he had no cause of action to approach this Court earlier for making grievance about the higher seniority assigned to respondents nos. 3 and 4 and that the cause of action was furnished only when respondent no.3 and 4 came to be promoted to the higher cadre of Executive Engineers by order dated November 30, 1996 (Annexure H Page 37). It is therefore, submitted that the authorities be directed to assign higher seniority to the petitioner above respondent nos. 3 and 4 and that the authorities be directed to promote the petitioner to the cadre of Executive Engineer with effect from the date when the aforesaid respondents were promoted.

5. After admission of the petition, The Deputy Secretary, GMB has filed Affidavit-in- reply to the petition contending that the petitioner, respondent nos. 3 and 4 and other employees of the GMB were employees of the State Government in Ports Organization prior to April 5, 1982 and that they were allocated to the GMB w.e.f. April 5, 1982 as per the provisions of Section 20(1)(f) of the Gujarat Maritime Board Act, 1981, which read as under:

"20.(1).As from the appointed day, in relation to any port,

(f). every employee serving under the State Government immediately before such day solely or mainly for or in connection with the affairs of the minor port shall become an employee of the Board, shall hold his office or service therein by the same tenure and upon the same terms and conditions of service as he would have held the same if the Board had not been established and shall continue to do so unless and until his employment in the board is terminated or until his tenure, remuneration or terms and conditions of service are duly altered by the Board:

Provided that the tenure, remuneration and terms and conditions of service of any such employeeshall not be altered to his disadvantage without the

previous sanction of the State Government."

It is, therefore, submitted that in view of the above legal position, the GMB has assigned the petitioner as well as respondent nos. 3 and 4 and other employees the same seniority in the cadre of Deputy Executive Engineer which was assigned to them by the State Government as per the final seniority list dated July 5, 1982 showing the position as on April 4, 1989. The Board published the said final seniority list after the State Government published provisional seniority list dated January 20, 1987 wherein respondent 3 was shown senior to the petitioner but respondent no.4 was shown junior to the petitioner. The petitioner lodged his objections to show him senior to respondent no.3. After considering the objections the Government published aforesaid final seniority list dated May 7, 1989 wherein the petitioner was shown junior to both respondent nos. 3 and 4.

It is submitted on behalf of the respondents that since the petitioner has not challenged the said final seniority list for a long period of seven years the petitioner cannot now be permitted to agitate his claim regarding seniority above respondent nos. 3 and 4 and the petition deserves to be dismissed on the ground of delay, laches and acquiescence.

As far as the claim of the petitioner on merits is concerned, it has been contended in the aforesaid affidavit that since the petitioner was earlier working as supervisor on the work-charged establishment between February 1969 and February 12, 1971 the said period cannot be considered as part of his service in the cadre of Supervisors on regular establishment of the respondent Board as per the Circular dated May 8, 1980 (Annexure V) which was issued by the State Government pursuant to the judgment of this Court in the case of D.T.Parmar and others Vs. The State of Gujarat in Special Civil Application No.2653 of 1978. Since the order dated November 24, 1977 (Annexure E) provisionally promoting the petitioner and others was issued prior to the date of the aforesaid judgment, no remark was made against the petitioner's name as his work charge service was taken into account.

6. In rejoinder Mr.Upadhyay, learned counsel for the petitioner submitted that the publication of the seniority list by the State Government would not be

relevant because the present employer of the petitioner is GMB-respondent no.2 herein and the GMB has not published any final seniority list of the cadre of Deputy Executive Engineers so far. Moreover, the GMB has not taken any overt action after publication of the provisional seniority list and therefore, the cause for filing the present petition arose only when the GMB issued promotion order of respondent nos. 3 and 4 on November 30, 1996.

On merits Mr. Upadhyay further submitted that the seniority in the cadre of Deputy Executive Engineers was required to be computed on the basis of the normal principle of continuous officiation and even the promotion order dated November 24, 1987 (Annexure E) did not make any remarks against the name of the petitioner unlike the remarks made against the names of respondent nos. 3 and 4 and therefore, the petitioner was entitled to get seniority in the cadre of Deputy Executive Engineers above respondent nos. 3 and 4.

7. Having heard the learned counsel for the parties at length, this Court is of the view that the petition deserves to be dismissed on the ground of delay, laches and acquiescence. Miss Mandvia, learned counsel for respondent no.2 GMB is justified in submitting that in view of the terms and conditions of the statutory allocation contained in clause (f) of sub-section (1) of Section 20 of the Gujarat Maritime Board Act, 1981, the Board could not have altered the seniority assigned to respondents nos. 3 and 4 and the petitioner in the cadre of Deputy Executive Engineers as on April 4, 1982 as per final seniority list of July 5, 1989. If the petitioner had any grievance against the said seniority the petitioner ought to have initiated appropriate legal proceedings for challenging the said final seniority list dated July 5, 1989. The petitioner not having done so for a long period of seven years cannot now be permitted to agitate that grievance for seniority merely on the ground that the present employer GMB has not published the final seniority list. As already stated above, the GMB could not have altered the seniority of respondent nos. 3 and 4 over the petitioner in the cadre of Deputy Executive Engineers from what was assigned to them by the State Government as on April 4, 1982 i.e. immediately prior to their allocation to the GMB.

8. In this connection it is worthwhile to refer to the following principle laid down by the Supreme Court in the case of K.R. Mudgal Vs. R.P. Singh, AIR 1986 SC 2086:

"Satisfactory service conditions postulate that

there should be no sense of uncertainty amongst the Government servants created by the writ petitions filed after several years as in this case. It is essential that any one who feels aggrieved by the seniority assigned to him should approach the Court as early as possible as otherwise in addition to the creation of a sense of insecurity in the minds of the Government servants there would also be administrative complications and difficulties."

Similarly in the case of Malcom L.D'Souza Vs. Union of India, AIR 1975 SC 1269 a constitution Bench of the Apex Court has made the following weighty observations:

" Although security of service cannot be used as a shield against administrative action for lapse of a public servant, by and large one of the essential requirements of contentment and efficiency in public service is a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one's position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time."

9. In view of the above discussion, there is no manner of doubt that the present petition filed in the year 1996 for challenging, for all practical purposes, the seniority settled in 1989 suffers from delay, laches and acquiescences and, therefore, this ground alone is sufficient to dismiss the petition. Since the petition is being dismissed on the ground of delay, laches and acquiescence, there is no need to go into the merits of challenge to the seniority of respondent no.3 and 4 over the petitioner in the cadre of Deputy Executive Engineers.

10. At this stage Mr.Upadhyay submitted that at least on the basis of seniority lists prepared by the respondents, the petitioner's case is required to be considered for promotion to the cadre of the Executive Engineer Ms. Mandavia has stated that subject to the operation of roster for reservation of posts for SC/ST/SEBC employees, the petitioner's case will be considered in due turn as and when a vacancy is decided to be filled in.

11. In the result, the petition is hereby dismissed .  
Rule is discharged with no order as to costs.

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